

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
GO EAST CORPORATION,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

)  
)  
) PCHB NOS. 84-35, 84-36,  
) 84-37, 84-38, 84-39,  
) 84-40, 82-41, 84-42,  
) 84-65, 84-73, 84-74,  
) 84-75, 84-76

)  
) FINAL FINDINGS OF FACT,  
) CONCLUSIONS OF LAW  
) AND ORDER  
) (AMENDED)

This matter, the appeal from the issuance of civil penalties for the alleged violation of Regulation I, came before the Pollution Control Hearings Board, David Akana (presiding) and Lawrence J. Faulk at a formal hearing on April 10, 1984.

Appellant was represented by its attorney, Mary MacIntosh, respondent was represented by its attorney, Keith D. McGoffin. Olympia court reporter Jane Johnson, recorded the proceedings.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1  
2 FINDINGS OF FACT

3 I

4 On October 26, 1983, at about 9 10 a.m., respondent's inspector  
5 visited appellant Go East Corporation's disposal site located at 180th  
6 Street Southeast in Everett as a result of a citizen's complaint. A  
7 large plume of dense white smoke with a pungent odor was observed rising  
8 from burning demolition materials. The inspector properly positioned  
9 himself and recorded visible emissions of 100 percent for eleven  
10 consecutive minutes. Appellant did not possess any permit for the fire.

11 For the above events, appellant was issued notices of violation of  
12 sections 9.03(h), 8.02(3) and 8.05(1) of Regulation 1.

13 II

14 The fire was started from an undetermined cause. The fire and  
15 resulting emissions of smoke and odor came from property which at all  
16 relevant times was in the ownership and control of appellant.

17 Appellant was aware of the risks of fire at a disposal site.  
18 However, the risks were not met by commensurate operable fire equipment  
19 on hand. Consequently, the fire was allowed to burn out of control.

20 III

21 During the days following the fire, appellant planned to undertake  
22 a strategy which theoretically would allow the fire to burn itself out.  
23 However, the fire department sprayed water over the face of the disposal  
24 site attempting to extinguish the fire. The fire was not extinguished.  
25 Appellant asserted that the action taken by the fire department caused  
26 greater areas of the site to be exposed to the fire.

Appellant's later attempt to put out the fire using a bulldozer and dirt were not successful. The company ran out of funds and work stopped. The fire continues to smolder underground, emitting smoke and odorous gases continuously.

#### IV

For the emissions and events that were observed and reported appellant was issued various notices of violation and the following civil penalties each for \$250

DATE	TIME	CP NO.	REGULATION - DESCRIPTION
10/26/83	9 10am	5893	Section 8.02(3) - Prohibited materials
	9 11am	5893	Section 8.02(5) - No fire department permit
	9 12am	5893	Section 8.05(1) - No agency approval
10/26/83	9 28am	5894	Section 9.03(b) - Opacity WAC 173-400-040(1)
10/27/83	10 07am	5895	Section 9.03(b) - Opacity WAC 173-400-040(1)
10/27/83	10:20am	5896	Section 8.02(3) - Prohibited materials
	10:21am	5896	Section 8.02(5) - No fire department permit
	10 22am	5896	Section 8.05(1) - No agency approval
11/17/83	1 20pm	5898	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
11/18/83	8:20am	5899	Section 9.03(b) and WAC 173-400-040(1) Opacity
12/8/83	12 15am	5908	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
11/18/83	8 20am	5900	Section 8.02(5) - No fire department permit
	8 20am	5900	Section 8.05(1) - No agency approval
12/27/83	10 30am	5955	Section 8.02(5) - No fire department permit
	10 30am	5955	Section 8.05(1) - No agency permit

10	12/27/83	10 30am	5956	Section 9.11(a) and WAC 173-400-040(5)
		11 00am	5956	Injurious emissions
		11 25am	5956	
11	1/31/84	1 23pm	5967	Section 9.11(a) and WAC 173-400-040(5)
				Injurious emissions
12	2/6/84	12 15pm	5961	Section 9.11(a) and WAC 173-400-040(5)
				Injurious emissions
13	1/16/84	10 00am	5947	Section 9.11(a) and WAC 173-400-040(5)
				Injurious emissions

From the notices of civil penalties issued, appellant appealed to this Board. Appellant's first appeal was received on January 19, 1984, and the last appeal was received March 6, 1984.

#### V

The smoke and odor from the fire left appellant's property and intruded on the residences surrounding the disposal site on the days and times alleged. The affected residents suffered from nausea, itching burning eyes, running noses, and breathing difficulties from the smoke and stench which occurred on both days and nights. The emissions curtailed ordinary residential activities, including rest, relaxation, and entertainment. These emissions affecting the residents have been of such quantities, characteristics and duration which unreasonably interfered with their enjoyment of life and property. These emissions exceeded that which persons of ordinary and normal sensibilities would find acceptable.

#### VI

Residential areas either border or are near appellant's site to the north, east and west. Trees and natural vegetation are located to the south of the site. Some of the residents have commenced a lawsuit

1  
2 against appellant relating to effects of emissions from the disposal  
3 site.

4 VII

5 The condition of an uncontrolled fire at appellant's disposal site  
6 has been declared a public nuisance in the Superior Court for Snohomish  
7 County (Cause nos. 83-2-04185-4 and 83-2-04207-9). A limited warrant of  
8 abatement was executed authorizing the extinguishment of all fires on  
9 the site.

10 VIII

11 The Board finds that appellant possessed no permit or other written  
12 approval for the fire and emissions occurring on the dates and times  
13 alleged. The Board also finds the emissions occurring were detrimental  
14 to the health, safety, or welfare of the complaining witnesses as  
15 alleged.

16 IX

17 Appellant has had previous contact with respondent relating to  
18 matters arising under Regulation I.

19 X

20 Pursuant to RCW 43.21B.260, respondent has filed a certified copy  
21 of its Regulation I and amendments thereto which are noticed.

22 Section 8.02(3) makes it unlawful for any person to cause or allow  
23 any outdoor fire containing garbage asphalt, petroleum products, paints,  
24 rubber products, plastics, or any substance other than natural  
25 vegetation which normally emits dense smoke or abnoxious odors.

1  
2 Section 8.02(5) makes it unlawful for any person to cause or allow  
3 any outdoor fire in violation of any applicable law or regulation of  
4 another governmental agency.

5 Section 8.05(1) makes it unlawful for any person to cause or allow  
6 any outdoor fire (with exceptions not here relevant) unless written  
7 approval has been issued by respondent under such conditions established  
8 by respondent.

9 Section 9.03(b) makes it unlawful for any person to cause or allow  
10 the emission of any air contaminant for more than three minutes in any  
11 one hour which is greater or equal to 20 percent opacity.

12 Section 9.11(a) makes it unlawful for any person to cause or permit  
13 the emission of an air contaminant if it causes detriment to the health,  
14 safety or welfare of any person, or causes damage to property or  
15 business.

16 Section 3.29 provides for a civil penalty of up to \$250 per day for  
17 each violation of Regulation I. In the case of a continuing violation,  
18 each day's continuance is deemed a separate and distinct violation.

19 XI

20 WAC 173-400-040(1) makes it unlawful for any person to cause or  
21 permit the emission for more than three minutes in any one hour of an  
22 air contaminant from any source which exceeds 20 percent opacity.

23 WAC 173-400-040(5) provides that no person shall cause or permit  
24 the emission of any air contaminant from any source if the air  
25 contaminant causes detriment to the health, safety or welfare of any  
26 person.

1  
2 XII

3 Any Conclusion of Law which should be deemed a Finding of Fact is  
4 hereby adopted as such.

5 From these Findings the Board comes to the following

6 CONCLUSIONS OF LAW

7 I

8 The Board has jurisdiction over the persons and subject matter of  
9 this proceeding.

10 II

11 The continuing nature of the fire was caused by the inability of  
12 appellant to properly contain and extinguish it.<sup>1</sup> Although appellant  
13 was not shown to have started the fire, the risks of the disposal  
14 business were well known and foreseeable to it.

15 We conclude that violation of Sections 9.03(b), 9.11(a) and 8.02(3)  
16 were shown by respondent on the dates alleged. We similarly find  
17 violations of the state regulations cited under WAC 173-400. These  
18 violations are sufficient to fully sustain the civil penalties assessed  
19 on those dates.

20 We conclude that Section 8.05(1) was also violated on the dates  
21 alleged other than October 26, 1983. These violations are technical in  
22 nature and would not alone support the full civil penalties assessed.  
23 Respondent did not show that Section 8.02(5) was violated.

24  
25  
26 1. Lewis County v. SWAPCA, PCHB No. 81-7.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

1. Civil penalties nos. 5893, 5894, 5895, 5896, 5908, 5898, 5899, 5900, 5935, 5956, 5967, 5961 and 5947 are each affirmed.

DONE this 24<sup>th</sup> day of May, 1984.

POLLUTION CONTROL HEARINGS BOARD

*David Akana*

DAVID AKANA, Lawyer Member

*Lawrence J. Faulk* 5/24/84

LAWRENCE J. FAULK, Vice Chairman